

August 5 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Jeffery T. Renz, Esq.
Dylan McFarland, Intern
Criminal Defense Clinic
School of Law
University of Montana 59812
Attorneys for Petitioner

IN THE SUPREME COURT OF THE STATE OF MONTANA

DALE ERICKSON,

Petitioner,

-v-

MIKE FERRITER, Director of the
Montana Department of Corrections,

Respondent.

Cause No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

FILED

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State of Montana)
 :
County of Powell)

Petitioner Dale A. Erickson alleges, pursuant to Mont. Code Ann. § 46-22-101(2009), and Article II, § 19, and Article VII, § 2, Mont Const. (1972), that he is

currently unlawfully restrained of liberty. As grounds for this Petition, Mr. Erickson alleges and states:

FACTS

1. The Petitioner is and at all times material hereto has been an inmate at Montana State Prison in the custody of the Montana Department of Corrections.
2. Respondent Mike Ferriter is named in his official capacity as Director of the Department of Corrections and as custodian of the Petitioner.
3. Dale A. Erickson is unlawfully confined in the Montana State Prison.
4. Mr. Erickson was arrested in Powell County, Montana on June 27, 2002. He and co-defendant Darryl K. Willis were charged by information with eleven felony counts. *State v. Willis*, No. DC 02-26 (Powell County).
5. Mr. Erickson pled guilty to two counts of Conspiracy pursuant to M.C.A. §45-4-102 (2002), one count of Theft, M.C.A. §45-5-301(1)(b) (2002), and one count of Securities Fraud pursuant to M.C.A. §30-10-301(1)(b) (2002). All counts arose from the same course of conduct and involved one victim. (Judgment and Sentence, (May 20, 2003); Exhibit 1).
6. On May 12, 2003, Mr. Erickson and Mr. Willis were both sentenced to 25 years in the Montana State prison with the last ten years suspended. The sentencing court determined that “equal sentences are appropriate for the

Defendants.” (Judgment and Sentence at 9; Exhibit 1).

7. Mr. Erickson was parole eligible on May 11, 2006. (Parole Report (March 2009); Exhibit 2).

8. Mr. Willis, Mr. Erickson’s co-defendant, was paroled in January 2008. Mr. Erickson remains incarcerated.

9. Mr. Erickson is not and has never been considered to have management or disciplinary problems. He has completed all required treatment including Mental Health, Anger Management, Cognitive Principles and Restructuring, and A.D.S.P. Primary, and is considered to be treatment complete. (Parole Report at 3; Exhibit 2).

10. Mr. Erickson’s psychological evaluation summarized that although he “in effect” has denied and minimized his role in his offense, “he has probably learned his lesson and is much more likely to run legal business adventures in the future. He is therefore recommended for parole.” (Psychological Evaluation at 4 (March 9, 2008); Exhibit 7).

11. Mr. Erickson’s initial parole application was denied on March 22, 2006. The denial was based on the “Nature and severity of offense(s)” and “Strong objection from criminal justice authorities and/or citizenry.” The Board of Pardons stated, “Release at this time would diminish the seriousness of these

offenses and there [sic] effect on the community.” (Case Disposition (March 22, 2006); Exhibit #4). Only one citizen submitted a letter of objection prior to the hearing. (Letter, March 4, 2006; Exhibit 11). The Powell County Attorney Sheriff had written a joint letter on June 18, 2003, one month after Mr. Erickson was sentenced but three years prior to his initial parole hearing. (Letter, June 18, 2003; Exhibit 10).

12. The Parole Board denied Mr. Erickson’s second parole application on March 30, 2009. The reasons again included “Nature or severity of offense(s)” and “Release at this time would diminish seriousness of the offense.” The Parole Board, however, added two new reasons for denial: “Previous criminal history” and “Multiple offenses.” (Case Disposition, March 30, 2009; Exhibit 3).

13. “Previous criminal history” referred to a 1971 conviction for draft evasion. Mr. Erickson had been unconditionally pardoned for that offense in 1977. (1977 Presidential Pardon; Exhibit 9). After he called this to the Parole Board’s attention, the Board responded, “call it ‘Conscientious Objection’ or whatever you like, it is still a prior felony conviction.” (Letter, April 24, 2009; Exhibit 8). Mr. Erickson’s Presidential pardon had been noted in his file when the Board considered him in 2006 and 2009.

14. Mr. Erickson had committed no other offense before or after those

charged in Cause No. DC 02-26.

15. Mr. Erickson's risk assessment scale score is a total of 12 (*see* Case Disposition, Ex. 3, p. 2), classifying him as a "low level" risk. Seven (7) points of this score are based upon the offense for which he was fully and unconditionally pardoned. (Risk Assessment Scale; Exhibit 5). In other words, the risk assessment score considered by the Board should be 5.

16. Mr. Erickson was not denied parole in 2006 for "Multiple offenses," the Parole Board arbitrarily added "Multiple offenses" as a reason for denial of his 2009 parole.

17. Mr. Erickson's 2009 parole application was not denied on the basis that there was "Strong objection from criminal justice authorities and/or citizenry."

18. The 2009 Case Disposition was signed by only one Parole Board member, although two are required.

FIRST CLAIM (Separation of Powers)

19. The Montana Constitution delegates to the Montana Legislature the power to establish minimum and maximum penalties for classes of cases and classes of offenders.

20. The Montana Constitution delegates to the Montana Judiciary the

power to determine the minimum and maximum punishment for a particular crime and for a particular offender within the range established by the Legislature. The power of the Judicial Branch to impose sentence includes the power to deny or limit parole eligibility.

21. The Montana Board of Pardons and Parole is an executive branch agency established by an act of the Legislature. Although it performs an adjudicatory function, it may not exercise the powers of the Legislative or Judicial branches.

22. Based on the foregoing allegations, when the Board of Pardons denies parole by taking into account the same factors previously taken into account by the District Court when determining the prisoner's sentence, and when parole denial is not based upon other post-sentencing acts or omissions by the inmate, the Parole Board exercises powers delegated to the Judicial Branch in violation of Article III, §1 of the Montana Constitution.

23. In Mr. Erickson's case, the Parole Board denied parole based on the same factors taken into account when the District Court determined his sentence.

SECOND CLAIM (Double Punishment)

24. When there is no post-sentencing ground for denying parole, parole

denial is identical to limiting parole eligibility, which is a part of the sentence that may be imposed by the District Court.

25. Based on the foregoing allegations, the Parole Board took into account factors previously contemplated by District Court when it determined Mr. Erickson's sentence when it denied his parole, the Board violated his right to be free from double punishment in violation of Article II § 25 of the Montana Constitution and Amendment V of the U.S. Constitution.

**THIRD CLAIM
(Substantive Due Process)**

26. Based on the foregoing allegations, when the Board acts for arbitrary reasons, it violates a prisoner's right to substantive due process guaranteed by Article III, § 17 of the Montana Constitution (1973), and the Fourteenth Amendment to the United States Constitution, by arbitrarily denying his parole release.

27. Because the Montana Board of Pardons denied Petitioner parole on all of these grounds and because no other valid ground appears in the record, the Board's denial of Petitioner's release is unlawful, unconstitutional, and arbitrary. Because no other grounds for denial appear in the record, Petitioner's continued

confinement is unlawful.

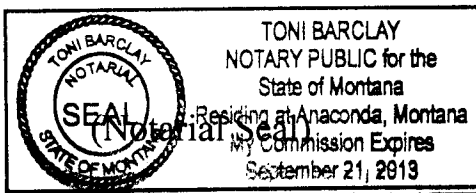
PRAYER FOR RELIEF

WHEREFORE, Dale Erickson prays that this Court issue the Writ of Habeas Corpus without delay and that Respondents demonstrate grounds for continuing his restraint above and beyond that intended by the sentencing court.


DALE ERICKSON, Petitioner

SUBSCRIBED AND SWORN TO BEFORE ME this ____ day of July, 2010.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.



DATED:


Notary Public, State of Montana

Residing at Deer Lodge, Montana

My Commission expires: September 21, 2013

JEFFREY T. RENZ, Petitioner's Attorney